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Responsible government or the pork barrel - which...

New York

1916

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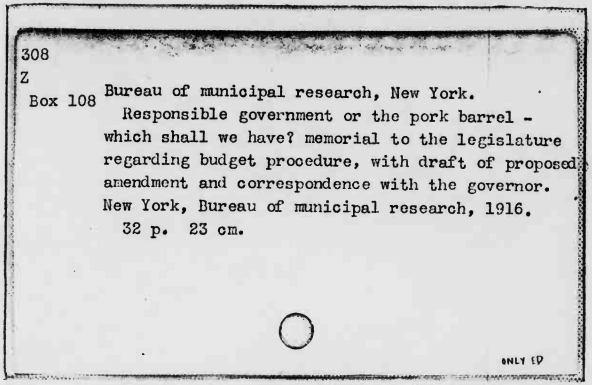

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Responsible Government or the Pork Barrel—
Which Shall We Have?

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MEMORIAL

TO THE LEGISLATURE REGARDING
BUDGET PROCEDURE

WITH DRAFT OF PROPOSED AMENDMENT

AND

CORRESPONDENCE WITH THE GOVERNOR

Bureau of Municipal Research
261 Broadway,
New York City, N. Y.
1916

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PREFATORY NOTE

The annual message of Governor Whitman, which went to the legislature on January 5th, was devoted to the subject of state expenditures. With this message the governor transmitted to the legislature a book of consolidated estimates, entitled "Tentative Budget Proposals," which took in all of the services of the state. This was in the form of an appropriation bill which is described in the governor's message as "a suggested form of appropriation bill, together with the estimates on which the same is based." The message of the governor, therefore, brought before the legislature on the first day of its session definite, concrete proposals which had had the careful consideration of the governor and of the committee appointed by him to review the estimates.

To the trustees of the Bureau it seemed desirable to raise the following questions: (1) whether the legislature should not amend the laws and change its rules in such manner as to give full publicity to the consideration and discussion of the governor's proposals; (2) whether the governor should not follow his expenditure "proposals" with a definite plan for financing state requirements after the proposals had been discussed in committee of the whole by the legislature.

The first suggestion was the subject of the memorial sent to the legislature by the Bureau on January 19th; the second was the subject of a letter sent to Governor Whitman on January 11th with a draft of the memorial enclosed to inform the governor what it was proposed to ask the legislature to do.

STATEMENT TO THE PRESS

On the same day that the memorial of the Bureau was sent to the legislature asking that the Legislative and Executive laws of the State be so changed as to provide for the consideration of the governor's message in committee of the whole, the following statement was given to the press.

STATEMENT BY THE BUREAU

"In public discussion two erroneous assumptions have been made regarding the present state of financial legislation in Albany. One is that the governor on January 5th submitted to the legislature a 'budget'; the other is that it is possible to have a budget openly reviewed and discussed in the legislature without a very radical change in procedure.

"The Bureau approves heartily the action of the governor and congratulates him on having taken a long step in the right direction when he assembled and critically reviewed the estimates of all the executive departments and sent to the legislature a consolidated estimate in the form of a single appropriation bill. This alone is an important proposal. It shows clearly the needs of the governor's own departments as expressed by him after carefully going into the requirements of each office before the legislature met. The governor calls this a 'tentative' budget proposal; but he is undoubtedly aware that without an accompanying revenue proposal, which he has not yet seen fit to make, it is not a real budget, in the customary sense of that term. It does not purport to do more than prepare and submit an appropriation bill with explanations of items. The citizens of the state are interested in how the money is to be raised quite as much as they are in how it is to be spent. Leadership is needed on both sides. This must be clearly understood in order that there may be no confusion in the mind either of the legislature or of the public as to what it is possible to accomplish by acceptance of the measure, and what further action is needed to give the state a budgetary method of finance.

"To assume that what the governor has done is a budget would end all discussion except as to its passage, and would still leave the state without a method of getting before the legislature each year a definite financial plan—one which would clearly set forth on the one side what are the state's financial needs, and on the other side, how funds are to be provided to meet them. It is impossible to consider the financial needs of the state unless the

one who prepares the expenditure plan also considers the ability of the state to raise money. The two things necessarily go together. If the governor or the legislature first undertakes to pass appropriation bills and then to consider the ways and means of raising money, the state will always have the same slip-shod, hit-or-miss financial legislation that has obtained in the past.

"The appropriation bill submitted has another importance in that it is designed to take the place of the irresponsible estimates of departmental heads and other officers heretofore made in the form of requests to the chairmen of legislative committees.

"The present procedure is to have everything done by one or another of 22 standing committees of the senate and 32 standing committees of the assembly. These standing committees have become the legalized trading posts for legislation. On all finance measures two committees have been given a monopoly. Section 23 of the Legislative Law requires that 'all bills that involve any appropriations . . . . when introduced in the senate shall be referred to the committee on finance, and when introduced in the assembly shall be referred to the committee on ways and means.'

"Under the present rules the governor's 'bill,' if it is considered at all—and unless public opinion asserts itself it probably will remain in the pigeon-holes of the finance committee of the senate and of the ways and means committee of the assembly to which it has already been consigned—will take the following course: It will be reviewed, discussed and practically disposed of behind the closed doors of a committee of the assembly, with no publicity given to criticism or requests for change; it will then be brought out and be put through the assembly, and with little or no debate will be sent to the senate; there it will go to another standing committee and be made the subject of further parley behind closed doors; then it will be reported out, and after further merely formal actions, including the amendments, will be passed and sent to the governor, who may use his veto power either to prevent harm by the legislature or to do harm by punishing some of his political enemies. The whole procedure is adapted to covert, secret dealings; it is not adapted to open-handed dealing and discussion in which public opinion shall be the real and final arbiter.

"The end sought by the proposed amendment to existing statutes and rules is to require that finance measures be brought into the open; that those who are responsible for administration be required to lay before the representatives of the people in committee of the whole a plan of financing for which they may be held to account; that each representative be given a chance publicly to get all the information he may desire, under a procedure which will enable him openly to question each executive head about any proposal under discussion and to make the answer of this executive a part of the record; that, after obtaining a full statement of facts and conditions from a responsible officer, each member of the legislature be given an opportunity in committee of the whole house publicly to offer all the criticism he may desire. But this is not all. The proposal made would further require that each member when criticising a proposal or attacking an officer before the bar of the legislature shall face the officer criticised and that opportunity shall be given to reply—also that fellow members of the legislature, as well as the public, shall have the benefit of open discussion. These are the alternatives: (1) publicity, through requiring all finance measures first to be taken up in committee of the whole house with executive officers present and opportunity given for inquiry and discussion; or (2) a continuation of the present practice of referring every proposal to a standing committee where it may be considered behind closed doors and disposed of in secret by the well-known practice of 'log-rolling' with all of its wasteful results.

"In support of this memorial the Bureau urges that the present procedure has been proved by experience to be vicious and subversive in every state and nation where it has been tried. That, on the other hand, such a procedure as is proposed, where used, has given publicity to business under consideration; has developed leadership; and has made the administration both responsive and responsible to the people. These are results for which the Bureau asks the serious attention of public-spirited citizens and citizen-bodies, as well as of legislators at Albany to whom the governor's appropriation bill has been submitted."

MEMORIAL

TO THE ASSEMBLY AND SENATE OF THE STATE OF NEW YORK, SUBMITTED BY THE BUREAU OF MUNICIPAL RESEARCH, ASKING CONSIDERATION IN COMMITTEE OF THE WHOLE OF THE APPROPRIATION BILL SUBMITTED BY THE GOVERNOR WITH HIS ANNUAL MESSAGE JANUARY 5, 1916.

As Governor Whitman has carefully reviewed the estimates for expenditures for 1917 and submitted to the legislature, on the first day of the session, a consolidated estimate and a definite request for appropriations in the form of a bill, with conditions attached, which he deems necessary to efficient administration—we respectfully present this memorial and ask that the "Executive Law" and the "Legislative Law" of the state and the rules of the respective houses be amended after the manner indicated in the "Draft of Proposed Amendment" attached. We also ask that the senate and assembly, without waiting for legislation on the subject, and in any event in order to avoid question as to the constitutionality of a legislative act on the subject (See Art. III, sec. 10), change their rules of procedure in such manner as will admit of consideration of all financial measures initially in each house in committee of the whole, with the governor or his representatives present to answer questions of members concerning past expenditures and to explain the needs of the public service for the appropriations requested.

Purpose of Proposed Amendments

The purpose of the proposed change in the Executive Law is to place responsibility on the governor for the preparation of an annual budget. The purpose of the amendment of the Legislative Law is to prescribe a procedure which will secure publicity in the consideration of these proposals and give opportunity for each member of the legislature to question the administration openly and publicly respecting moneys spent and the needs for amounts requested.

Summary of Proposed Changes in Procedure

In order that these purposes may be secured it is proposed that the statutes and the rules of the senate and assembly shall be changed so that:

1—All financial reports, estimates and appropriation bills shall be first considered and discussed by

each house of the legislature in committee of the whole instead of being referred to a standing committee.

2—No reference of finance bills shall be made to any standing committee until the committee of the whole house shall have reported thereon.

3—The governor personally or by his designated representatives shall be given the right to attend sessions of the committee of the whole to explain executive proposals.

4—No amendments increasing amounts of items over and above the amounts as submitted by the governor shall be in order in the deliberations of the committee of the whole, and any provisions for increases that may be proposed shall be submitted to the legislature as separate bills.

Facts About Present Procedure

In support of this memorial, attention is called to the following facts:

1—That the present procedure is not adapted to giving publicity either to what has been done with moneys appropriated, or what is the need for moneys requested.

2—That under the present procedure, the governor, a large majority of representatives, and the people, remain in ignorance of what action is to be reported and recommended by the standing committee on finance of the senate and the standing committee on ways and means of the assembly, until it is too late to have intelligent consideration given to the subject.

3—That under the present procedure, emergency messages have been resorted to frequently and as a result have destroyed what little opportunity there is for publicity under the regular rules.

4—That the present procedure fosters practices familiarly known as "log-rolling" and "pork barrel" legislation.

Attached is a list of 272 bills introduced by members in the senate and the assembly during the last session, which call for the expenditure of public moneys, (Exhibit "A"); also a list of 33 such measures which passed the senate and were sent to the assembly for concurrence, and of 72 such measures which passed the assembly and were sent to the senate for con-

currence. (Exhibit "B.") A brief history of 100 measures reported by the standing committee on ways and means of the assembly is also appended. (Exhibit "C.")*

Public Business Should Be Transacted Openly

An opportunity should be given the executive to explain publicly and to defend the reports of past expenditures and the need for further appropriations

In a popular government it is quite as desirable to know what are the views of the opposition as it is to have the views of the majority.

As a matter of procedure, no opportunity is now given to the opposition to put the administration on record, and no opportunity is given the governor and heads of departments to propose openly and publicly any constructive measure except by message or report, which, if considered at all, is taken up in their absence. It is important that the administration be given a chance to answer criticisms made on the floor of either house. Under the present system, appropriation bills are necessarily prepared by members who, being chosen by and responsible to a local constituency, cannot frame bills comprehensively from the standpoint of the needs of the entire state.

While under the existing constitution the most natural and effective working relations cannot be established between the legislature and the executive, it is urged that some such legislation and change of rules as herein suggested will tend to fix responsibility for extravagance and waste and provide opportunity for full public discussion of every fiscal measure.

BUREAU OF MUNICIPAL RESEARCH

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*No more convincing evidence is needed of the extent to which "log-rolling" and local "patronage" are employed in obtaining financial legislation than is found in these lists of bills introduced and passed. The last session is not exceptional in this respect. These exhibits are so voluminous that they are omitted from this folder. They will be printed as a part of "Municipal Research No. 69" in the January number of the Bureau's regular publication.

DRAFT OF PROPOSED AMENDMENT

AN ACT TO AMEND THE EXECUTIVE LAW IN RELATION TO THE DUTY OF THE GOVERNOR TO PRESENT ESTIMATES TO THE LEGISLATURE AND IN RELATION TO HIS POWER TO EXAMINE AND INVESTIGATE; AND TO AMEND THE LEGISLATIVE LAW IN RELATION TO THE SUBMISSION OF BILLS INVOLVING EXPENDITURES AND OF ESTIMATES FOR EXPENDITURES.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

Section 1. Chapter twenty-three of the laws of nineteen hundred and nine, entitled "An act in relation to executive officers, constituting Chapter eighteen of the consolidated laws," is hereby amended by adding a new section to be section ten, to read as follows:

Section 10. *PREPARATION AND SUBMISSION OF AN ANNUAL BUDGET, AND EXAMINATIONS AND INSPECTIONS BY THE GOVERNOR.*

The heads of all departments, offices, boards and commissions of the state, except the legislative and judicial branches thereof, shall file with the governor annually on or before the first day of November estimates of all expenditures in their judgment required for the conduct of their respective departments, offices, boards or commissions during the next ensuing fiscal year, as well as for the purpose of meeting any deficiencies in existing appropriations to meet expenses for the current year, and together with such statements or information as in their opinion may properly be considered in connection therewith or which may be requested by the governor. The governor is authorized to review the same and to submit to the legislature not later than the first day of the following February a consolidated estimate and a budget which will contain a financial plan for the next fiscal year supported by summary statements showing: (a) actual and estimated revenues and expenditures for a period beginning not less than two years prior to the period to be financed; (b) the present assets, liabilities, surplus and deficit, and the estimated financial condition of the state as of the beginning and the end of the period to be financed; (c) the present condition of funds and the estimated condition of appropriations and funds as of the beginning and end of the period to be financed; (d) such revenue bills as are deemed necessary to meet financial needs and ratably

and equitably to distribute the charges; (e) such measures for borrowing as may be deemed expedient.

The consolidated estimate when submitted under the authority of this act shall set forth what amounts, and the supporting items thereof which, in his judgment, are needed: (1) to meet, by new appropriations, the requirements of each department, office, board and commission established by law for the next ensuing fiscal year; (2) to supplement, by new appropriation, the authorizations already made to each department, office, board and commission established by law for the current fiscal year; (3) to complete undertakings authorized during past fiscal years by the reappropriation of unexpended balances of authorizations which had been encumbered by contracts before the fiscal term of the original appropriation expired; (4) to meet, by new appropriations, the requirements of any additional activities of the public service not heretofore authorized by law and which are recommended by the governor, and the governor in that part of such consolidated estimate which sets forth the needs of the existing establishment for the ensuing year shall show in comparison opposite each total and each supporting item the amount appropriated or authorized for the current fiscal year and the amounts expended for the last two completed fiscal years.

Section 2. Section twenty-three of Chapter thirty-seven of the laws of nineteen hundred and nine, entitled "An act in relation to legislation, constituting Chapter thirty-two of the consolidated laws,' is hereby amended to read as follows:

SECTION 23. APPROPRIATION BILLS, HOW REFERRED,—All bills that involve any appropriation from the treasury of the state, *or any of its funds or any of the funds under its management, and all estimates for expenditure submitted to the legislature by the governor,* when introduced *or submitted to the legislature* [in the senate shall be referred to the committee on finance, and when introduced in the assembly shall be referred to the committee on ways and means] *shall be referred to and considered in each house by the committee of the whole sitting as a committee of supply, and neither the senate nor the assembly shall proceed to the enactment of any measure or the consideration of any bill or estimate for raising or spending money, or refer the same to any standing committee until such measure, estimate or bill shall have been considered and reported on by such committee of the whole.*

The governor shall have the right to appear before either house, either in person or by a designated representative, and be heard

respecting any such measure, estimate or bill under consideration in such house by the committee of the whole, and the heads of the respective executive departments, offices, boards and commissions of the state shall also have the right, and it shall be their duty when requested by either house of the legislature, to appear and be heard in respect thereto during the consideration thereof, and to answer inquiries relative thereto. All meetings of the committee of the whole shall be open to the public. When the senate or assembly shall first resolve itself into committee of the whole on supply it shall notify the governor and give him or his designated representatives an opportunity to submit his budget, financial statements, and proposals, to explain the revenues and expenditures of the past year and the estimates submitted by him for the ensuing fiscal year, and to answer questions concerning the same. The estimates for expenditure shall then be considered in detail in the order of presentation by the governor; and votes shall be taken separately, in committee of the whole house, on the amount requested for each department.

After the first meeting of either house in committee of the whole to consider any such measure, estimate or bill, the meeting of such committee shall be a standing order of the day of such house at least one day in every week during the remainder of the session, until the committee shall rise and report its recommendations to the house respecting every such measure, estimate or bill; and whenever such order of the day is read, the house shall resolve itself into committee of the whole for the consideration of such measure, estimate or bill, and the president or speaker shall leave the chair without putting any question. If the committee of the whole in the senate or assembly wishes to hold public hearings or secure detailed information independently of that supplied by the governor, it shall be in order any time after the governor has presented the estimates or his budget to refer the same in whole or part to the finance committee of the senate, or to the ways and means committee in the assembly, or to any other standing committee or special committee for that purpose, provided such committees shall act as sub-committees of the committee of the whole in such cases and make their full and final report to the committee of the whole at such time as may be designated and not less than fifteen legislative days before final action is had in committee of the whole on any such measure, estimate or bill; but such reference shall not take the place of consideration in committee of the whole nor be substituted for the procedure presented in paragraph two of this section.

Upon the consideration of any fiscal measure in committee of

*the whole in either house any items may be eliminated or reduced, but it shall not be in order to move to increase any item of proposed expenditure submitted by the governor, or to add any new item, but any proposed increase or new item may be made the subject of a separate appropriation bill.**

*The foregoing amendment to the Executive Law and the Legislative Law of the state, taken with what is known as the "Moreland Act," is thought to be sufficient to lay the foundation for an effective budget procedure. The "Moreland Act," now in force as Section 8 of the Executive Law, is as follows:

Section 8. EXAMINATIONS AND INSPECTIONS BY THE GOVERNOR.—The governor is authorized at any time, either in person or by one or more persons appointed by him for the purpose, to examine and investigate the management and affairs of any department, board, bureau or commission of the state. The governor and the persons so appointed by him are empowered to subpœna and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath and to require the production of any books or papers deemed relevant or material. Whenever any person so appointed shall not be regularly in the service of the state, his compensation for such services shall be fixed by the governor, and said compensation and all necessary expenses of such examinations and investigations shall be paid by the treasurer out of any appropriations made for the purpose upon the order of the governor and the warrant of the comptroller.

LETTER TO THE GOVERNOR

The action taken by Governor Whitman in laying before the legislature carefully reviewed estimates and a proposed form of appropriation bill was regarded by the trustees of the Bureau as a long step in advance. This letter was written in part to commend the governor for the action which had been taken, and in part to raise with him the question as to whether he should not also submit his views on the methods of financing expenditures.

Due to the fact that the estimates had been laid before the legislature the first day of its session in the form of a draft of bill, question was also raised as to whether the governor should not serve notice that he would refuse to use his constitutional powers of emergency message.

January 11, 1916.

To His Excellency,
The Governor of the State
of New York.

Dear Sir:

We are glad to note that you have taken an advanced step in submitting a proposed appropriation bill to the legislature during the first week of its session. From that fact, from your annual message and from your public statements regarding the financial problems of the state, it is evident that you are sincerely interested in the development of a procedure which will make the executive responsible for preparing each year a well considered plan for financing the needs of the state and for ending, for all time, the present chaotic and invisible system of making appropriations.

Since no legal provision is made for a budget practice in this state, we are about to send to the legislature a memorial asking consideration of proposed amendments to the Executive Law and to the Legislative Law of the State—the one authorizing the executive to prepare and submit an annual budget, the other imposing on the legislature a procedure requiring that finance measures be taken up and discussed publicly in committee of the whole instead of being referred to standing committees of the senate and assembly, and secretly discussed, as is the present practice. The first draft of the proposed amendment you will find attached.

It is assumed that you agree with us on the following propositions:

1—That the measure which you submitted with your annual message on January 5, good as it is, is

not a "budget," in that it is not a plan of financing the state's needs; that it is an appropriation bill designed to take the place of the irresponsible estimates of department heads and other officers heretofore made in the form of requests to the chairmen of committees of the legislature.

2—That unless the present procedure is changed, this appropriation bill, if considered at all, will be considered, discussed and practically disposed of behind the closed doors of a standing committee of the assembly, with no publicity given to criticism or requests for change; it will then be brought out and go through the assembly, and with little or no debate will be sent to the other house, where again it will go to another standing committee and be made the subject of further parley behind closed doors; then it will be reported out and after further formalities and actions with amendments, it will be passed and sent to you.

3—That in so far as the executive has any part in the parleys and treaties which affect this measure, he will have still less opportunity given to him by law for doing so openly and publicly than has a member of the legislature.

4—That the use of the executive veto does not take the place of open and public legislative discussions and action; at best it does not give to the people the information necessary to a vote of confidence or lack of confidence at the next election.

5—That revenue and borrowing measures are not presented or taken up at the same time as appropriation measures, and thus far have not been in any manner connected or associated with the bill which has been prepared and submitted.

These fundamental facts being undisputed and indeed indisputable, we desire to urge upon you that you do not rest your activities for financial reform upon the proposed bill which was sent in with your annual address to the legislature, but that you follow this with a further step in which all citizens of the state are interested—namely—present in the near future to the legislature a plan or proposal for financing the state's activities for the next year. By submitting this at a date somewhat later than the time when the estimates and requests for appropriations are sent in, the governor will have the advantage of discussion of the appropriation bill before submitting a final draft or revenue and borrowing bills. He will be able, therefore, at this time to

present to the legislature a real "budget"—a financial plan or proposal for the ensuing year which will set forth in brief, contemplated expenditures, estimated revenues, contemplated borrowings, estimated surplus of revenues over expenses (or vice versa), estimated cash receipts over cash disbursements (or vice versa). In short, a definite plan of financing with a formal statement or address from the governor would place before the state in a businesslike, clear-cut fashion just what the situation is that must be faced; and give to the people as well as the legislature the benefit of an executive statement of financial condition as well as a constructive proposal for meeting financial needs.

May we urge that your careful attention be given to another question of present procedure in dealing with finance measures in the legislature. As has already been pointed out, there has been little opportunity given to the members of the legislature, other than those of the personnel of the two committees, to analyze or review the various departmental requests. Legislators and the public have been still further deprived of opportunity to learn of the import of proposed finance measures, through the use of the "emergency message" of the governor. This permits such bills to be passed without first having been printed and placed on the desks of all members for three legislative days prior to the time that final action is taken—frequently in typewritten form, with pasters and interlineations. It is a procedure that inherently is bad, rightfully the subject of severest criticism, and one which cannot be reconciled with any effective budget practice. It may fairly be assumed that if public announcement were made to the effect that an "emergency message" would not be forthcoming this year to facilitate star chamber consideration of finance bills, it would have a salutary effect upon the legislature in the stand which it might take in consideration of proposals looking toward a more effective budget practice.

We submit these suggestions to you in the thought that they are not only possible but eminently practical under the present constitution; and in the further thought that the public is so thoroughly disgusted with the "log-rolling" and "pork barrel" practices, and with those inscrutable methods called "invisible government" that you have an opportunity to stand before the state and the nation as both champion and leader of a cause in which the large majority of the electorate are ready to enlist.

It is our purpose to send the proposed amendment to the legislature with a memorial setting forth present practices, and urging upon the attention of both houses the need for changes in law of the character indicated. We also have in mind giving out both

the proposed amendment and the memorial to the press. In order that we may have from you the benefit of criticism and suggestion, I am asking Mr. Holton to present this to you personally.

Sincerely yours,

(Signed) F. A. CLEVELAND, Director.

ANSWER OF THE GOVERNOR

On the 21st day of January the Bureau received from the Governor the following letter:

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY

January 19, 1916.

Mr. Frederick A. Cleveland,
Director, Bureau of Municipal Research,
261 Broadway,
New York City.

Dear Sir:

I am in receipt, under date of January 11, 1916, of a communication from you, together with a draft of a memorial to the Legislature and certain proposed amendments to the Executive and Legislative Laws, these documents being suggested as you say by the Message and the Tentative Budget Proposal, which I submitted to the Legislature at the opening of the present session.

Because you appear to have misunderstood, to some extent, the purpose which I have in mind in connection with this matter, I will discuss your communication in such detail as is necessary to indicate the points upon which that misunderstanding on your part exists. You state:

> "We are glad to note that you have taken an advanced step in submitting a *proposed* appropriation bill to the Legislature during the first week of its session. From that fact, from your annual message and from your public statements regarding the financial problems of the state, it is evident that you are sincerely interested in the development of a procedure which will make the executive responsible for preparing each year a well considered plan for financing the needs of the state and for ending, for all time, the present chaotic and invisible system of making appropriations."

Your assumption that I am in favor of the preparation annually by the Executive of a *complete*[1] appropriation act; all of the items of which shall have the final approval of the Executive, and that this proposed appropriation act shall be submitted to the Legislature as an established executive procedure is incorrect.

I am in favor of the Executive going just as far in this matter as I have done in my Tentative Budget Proposal, now before the Legislature, namely, that the Governor submit to the Legislature at the opening of the session during his term, or, at the expiration of his term, prepare for submission to the following Legislature, a tentative appropriation budget for all the departments which are under Executive control, and in such document

[1] Attention is called to the fact that "complete" was not used.

to indicate as nearly as possible the judgment of the Executive as to what the expenditures for those departments should be for the next fiscal year, and together with these revised estimates present the estimates of other departments as submitted to the Comptroller subject only to revision as to classifications of expenditure. I have done this in the present instance under existing laws and I cannot conceive that succeeding Executives will require the restraint of a legislative act to prevent their return to the old procedure.

Because up to this time, there did not exist a proper model for a state appropriation bill, my duty in the present instance was two-fold: first—to present for consideration to the Legislature such a model as constitutional restrictions permitted; and second —also to express my views as to what I deemed to be reasonable allowances for the financial support of departments under Executive control or direction for the next fiscal year. For those departments over which I have no administrative jurisdiction (except in the Department of Education, where the Commissioner joined with me in expressing the needs of his Department for the ensuing year on a minimum basis, commensurate with departmental requirements), my Tentative Budget Proposal does not represent my views as to the amounts which properly should be appropriated. In this group are included appropriations for the Legislature; for the Courts, other than the Court of Claims, and for the departments administered by the other elective officers of the State.

My budget proposal goes as far as I deemed it advisable for the Executive to go and does not attempt to establish the principle that the Executive shall originate appropriations. The expression by the Executive of what he deems shall be the allowances for the departments controlled by him is in effect a consolidation and review of departmental estimates by the Executive before they are submitted to the Legislature for consideration, and in no wise changes the principles established either under the present constitution or under existing law.

I hold the same view with regard to the function of the Executive in relation to any proposed revenue legislation. It is the duty of the Executive, where he deems revenue legislation to be necessary, to indicate his views in that respect by an advisory message to the Legislature. That has been, and will, undoubtedly, continue to be the practice.

Your proposed amendments to the Executive and Legislative Laws of the State represent an attempt to establish by legislation as much as possible of that Executive budget plan which was a part of the recently defeated proposed constitution.

Whatever may be my theoretical views as to the State budget procedure, except in respect of the right of the Executive to reduce, as well as to veto, items, I am opposed to any extension of this procedure beyond the limitations established by the existing constitution, and it is obvious that the existing constitution contemplates that both appropriation and revenue measures shall originate in the Legislature, and not in the Executive branch of government.

My suggestion to the Legislature for amendment to the present constitution in granting to the Executive the right to reduce an item in an appropriation bill in addition to his present power to veto the item as a whole, does not disturb the balance which exists under the present constitution between the Executive and the Legislature, simply allowing the Executive a slightly wider latitude in the exercise of his constitutional right to check legislative action.

A large part of the confusion and lack of system in the administration of State finance and in the form which has been followed in appropriating moneys for the use of government and in providing revenues to meet these liabilities, has resulted, I believe, from a lack of intelligent study of the problems and not from any inherent desire of our legislative bodies to do things improperly or incorrectly. If the Legislature is started on the right course in respect to these matters, I feel satisfied that a continuance of the right practice may safely be left to them. At any rate, a departure from that right course on the part of the Legislature will promptly be checked by the Executive under the budget plan suggested in my Message, and the Governor still continues to be a check on the Legislature and not the usurper of legislative functions.

Taking up your communication further in detail, you have stated five propositions, which you introduce by the phrase: "It is assumed that you agree with us on the following propositions."

Your first proposition is:

> "1—That the measure which you submitted with your annual message on January 5, good as it is, is not a 'budget,' in that it is not a plan of financing the State's needs; that it is an appropriation bill designed to take the place of the irresponsible estimates of department heads and other officers heretofore made in the form of requests to the chairmen of committees of the legislature."

My answer to your first proposition is that the Tentative Budget Proposal, which I submitted to the Legislature, together with my references to it in the Message which it accompanied,

clearly indicate its nature. The phrase at the head of this budget proposal reads as follows: "An act making appropriations for the support of government." It is obvious that with this heading it did not purport or intend to deal with the revenue side of State finance.

Your second proposition reads as follows:

> "2—That unless the present procedure is changed, this appropriation bill, if considered at all, will be considered, discussed and practically disposed of behind the closed doors of a standing committee of the assembly, with no publicity given to criticism or requests for change; it will then be brought out and go through the assembly, and with little or no debate will be sent to the other house, where again it will go to another standing committee and be made the subject of further parley behind closed doors; then it will be reported out and after further formalities and actions with amendments, it will be passed and sent to you."

I do not know whether your assumption, as indicated in this proposition, is true or not. The action of the legislature, in connection therewith, will have to be the answer. All conferences or discussions in connection with State appropriations, under my direction, have been in public. This was true of the procedure in the Spring of 1915, when open public hearings were held in the Executive Chamber, on the items in the "Thirty Day Bills," transmitted to me by the Legislature, and also similar open public hearings were held in the Executive Chamber in arriving at the tentative amounts to be included in the present budget proposal for the departments over which I have control or jurisdiction. I firmly believe that no discussion of appropriation matters should be held in private sessions either by the Legislature or by the Executive. I have endeavored to emphasize my views on this point, not only in public statements, but in my public acts. If the Legislature follows my example or conforms to my wishes in this matter, there should be no private sessions of a Legislative committee, either for the consideration of an appropriation bill or for the consideration of any other public matter. No public business of any kind should be considered in private, except those matters pertaining to criminal prosecutions, or legal prosecutions or defense where the public interest would be obviously jeopardized by publicity. I see no objection to the suggestion by you or by any other citizen of a plan of publicity to the Legislature, either in connection with the consideration of appropriation bills or any other legislative activity.

Paragraph 3 reads as follows:

> "3—That in so far as the Executive has any part in

> the parleys and treaties which affect this measure, he will have still less opportunity given to him by law for doing so openly and publicly than has a member of the Legislature."

I believe that with the Executive power to reduce as well as to veto, the Executive will be in position adequately to safeguard the public interest in the matter of appropriation. Your proposition 4 reads as follows:

> "4—That the use of the Executive veto does not take the place of open and public legislative discussions and action; at best it does not give to the people the information necessary to a vote of confidence or lack of confidence at the next election."

In this connection, I call your attention to the following paragraph in my Message:

> "Because of this latter constitutional limitation (the right to veto without the right to reduce) the budget form of appropriation act which I now suggest depends for its success on the complete co-operation of the Legislature and the Executive during its preparation, so that those features which require segregation shall before final enactment be acceptable to both the Legislature and the Governor."

If the Legislature does not submit this appropriation bill to me until the time when it becomes a "Thirty Day Bill," and does not co-operate with me in fixing the items of the segregated schedules supporting the appropriations, and the bill, as submitted to me, is in such shape that I must either veto activities as a whole or accept allowances for expenditures which I deem unwise, the condition which your proposition suggests would confront me, but I feel sure that nothing of the sort will happen and that the co-operation which I seek will be accorded me by the Legislature. In that event, the appropriation bill as passed will be a bill which I can approve in all of its items, and in approving which, to use your phrase, "give to the people the information necessary to a vote of confidence or a lack of confidence at the next election."

Your fifth proposition is as follows:

> "5—That revenue and borrowing measures are not presented or taken up at the same time as appropriation measures, and thus far have not been in any manner connected or associated with the bill which has been prepared and submitted."[1]

The State of New York is not a corporation organized for earning dividends and it cannot be viewed from that standpoint. I do not believe that the revenue side of the State's finance, as

[1] This refers to the lack of consideration of "ways and means" by those who ask for money grants.

a first proposition, should be taken up at the same time as the expenditure side, because the expenditures of the State should not be based upon the possible revenues which may be gouged out of the taxpayers, but upon the minimum allowance for the actual necessities of State activities. It is easy to conceive that if both of these propositions were considered one as part of the other, and the revenue side of the State's finances were prosperous that the expenditures would increase because of that fact and that appropriations for other than mandatory or strictly necessary purposes would be encouraged.

The practice of the State in the past, so far as I have been able to ascertain, has been to appropriate to the extreme limit of the complaisance of the Executive or up to the point of public protest and then devise some scheme for increasing the revenues of the State to meet that appropriation program. It is my judgment that not one dollar should be raised either in revenue or by direct taxation, which is not mandatorily required by State needs. It is further obvious that if the amount of these mandatory State needs is expressed in a figure beyond the prospective resources of the State within the period covered by those appropriations, then either the appropriation bill must be amended to reduce it to those anticipated revenues or that some steps must be taken for the increase of revenues, but I am very certain that the two ideas should be clearly dissociated in the minds of the Legislature and in the mind of the Executive, that our first duty is to reduce our appropriation bill to its minimum and not confuse this issue or interfere with its success by a consideration of what the revenues of the State will be as an act preliminary to determining the minimum of the State's expenses.

When the Legislature has decided the amount, which in its judgment is necessary to be appropriated for the needs of the State for the ensuing fiscal year, a discussion of the revenue side of the problem will be in order, to determine, as I have previously stated, either upon a further reduction of the appropriations, if the anticipated revenues are not adequate, or to increase those revenues, if the appropriation act is at the lowest possible minimum which can be reached.

Following your five propositions, two points are raised, concerning which I shall speak specifically.

You refer to the abuse in the past of the Emergency Message of the Executive, in connection with appropriation bills. I have already, in conference with the leaders of the Senate and Assembly, informed them that, in view of the fact that a tentative budget proposal, containing, as it does, an agreed appropriation pro-

gram for the departments under my jurisdiction, was placed on the desk of each member on the opening day of the session, I would insist that the appropriation act shall be finally passed without recourse to an Emergency Message.

With reference to your statement that there has been in the past little opportunity for members of the Legislature, other than those on the Finance Committee of either house, to analyze or review the various departmental requests, I would suggest that the fact that a carefully reviewed program of appropriations for the departments under my jurisdiction, together with the departmental requests of all other State departments, reclassified in proper budget form, was in the hands of each Legislator from the opening day of the session, each legislator has, therefore, the fullest opportunity to be informed and to keep himself informed of each step in the process of appropriations. Furthermore, by reason of the fact that the documents composing and supporting the tentative budget proposal were made legislative documents upon their receipt from my hands, any citizen of the State, desiring the same detailed information, may now obtain it by application to the document clerks of either house.

On the assumption that my tentative budget plan, as I have indicated it, is followed each year, full opportunity for public and legislative scrutiny of items of proposed expenditure will be given from the opening day of the legislative session until the appropriation act is finally passed. This fact together with the form of the tentative budget proposal, which shows in the most minute detail, how the money of the State is to be used, would seem to do away completely with what is, as you say, "the present chaotic and invisible system of making appropriations."

In conclusion I would say that I feel that I have gone as far as I am required to do in my suggestions to the Legislature in what I have said in my Message. It is, of course, entirely within your rights or the rights of any group of citizens to enlarge or amplify upon that program, but I believe that any action of this sort should be taken up directly with the Legislature and not through the Executive, with the understanding also, in the case of your proposals, that I am not at this time prepared to support any plan which shall make the Executive other than what he has been in the past, namely, an advisor to the Legislature, when necessary, on all matters of legislation, and a check upon the Legislature when its acts do not conform to his judgment as to what is for the best interests of the State.

Very truly yours.

(Signed) CHARLES S. WHITMAN.

REPLY TO THE GOVERNOR'S ANSWER

As the answer from the governor seemed to be based on a misunderstanding of certain points which had been raised and left others somewhat in doubt, the following reply was sent for the purpose of listing certain propositions and bringing them to the consideration of the governor a little more definitely.

BUREAU OF MUNICIPAL RESEARCH
NEW YORK

January 25, 1916.

To His Excellency,

The Governor of the State of New York.

Dear Sir:

This is to thank you for your esteemed favor of the 19th in answer to mine of the 11th, and to bring before you certain questions raised concerning which we are not entirely clear.

We regret that you began your letter with an argument based on an assumption that you were urged to submit "a complete appropriation bill." Such an expression is not to be found either in our letter of the 11th or in our memorial. Possibly we erred in not using the exact language of your message in which you refer to the document sent to the legislature as "a suggested form of appropriation bill, together with the estimates on which the same is based."

May we also point out that there is no suggestion on our part to decrease the powers of the legislature, as the phrase "preparation annually by the executive of a complete appropriation act" used by you might imply.

What moved the trustees of the Bureau of Municipal Research to send to the legislature their memorial on the 19th was this: that on January 5th you had sent to the legislature with your annual message a carefully prepared document variously described as "Proposed form of budget" with "tentative appropriation figures," "tentative budget proposals," etc.; whereas under the present statutes and the legislative procedure of this state there is no legal provision for a budget practice—in fact, the present statutory law does not contemplate that there will be a budget practice. Experience shows that wherever executives merely submit consolidated estimates to a legislative body and secure no open legislative procedure thereon, their efforts to place public finances on a sound basis are without avail.

You may recall that President Taft made such an attempt during the last year of his administration; but his budget was consigned to the pigeon-holes of standing committees and never again saw the light of day. Executives of at least ten states have done substantially what you did in your annual message; but their proposals have been taken into the dark closets of one standing committee after another, only to come out mutilated beyond recognition. The trustees of the Bureau of Municipal Research prepared their memorial to raise question as to whether the legislature should not do its part—by amending the laws so that the State of New York may have a budget procedure which will give publicity to the consideration of executive proposals; and they asked me to send you a copy of their first draft, in my letter of the 11th, to let you know what the legislature was to be urged to do.

In my letter I raised two questions: (1) whether the Governor should not, in the near future, follow his "tentative appropriation figures," after time had been given for their consideration, with a definite plan for financing next year's expenditures, and (2) whether the Governor should not give notice that he would refuse to use his constitutional power to forward financial legislation in the last days of the session, by what is known as the "emergency message."

In your letter you answer the second of these questions affirmatively by saying that you "have already, in conference with leaders, * * * informed them * * * that appropriations shall be passed without an emergency message." The first question, however, seems to have been missed in discussion of another reference to present revenue practice (pp. 10, 11 and 12 of your answer). Since the main purpose of our letter of January 11th was to get before you this question, will you pardon repetition, in the thought that it may have escaped your notice? This is the language of our letter:

> "We desire to urge upon you that you do not rest your activities for financial reform upon the proposed bill which was sent in with your annual address to the legislature, but that you follow this with a further step in which all citizens of the state are interested, namely—present in the near future to the legislature a plan or proposal for financing the state's activities for the next year."

And to make sure that there should be no misunderstanding about our meaning, the suggestion was enlarged on as follows:

> "By submitting this at a date somewhat later than the time when the estimates and requests for appropriations are sent in, the governor will have the advantage of discussion of the ['tentative'] appropriation bill before submitting a final draft or revenue and borrowing bills. He will be able, therefore, at this time to present to the legislature a real 'budget'—a financial plan or proposal for the ensuing year which will set forth in brief contemplated expenditures, estimated revenues, contemplated borrowings, estimated surplus of revenues over expenses (or vice versa), estimated cash receipts over cash disbursements (or vice versa); in short, a definite plan of financing with a formal statement or address from the governor would place before the state in a businesslike, clear-cut fashion just what the situation is that must be faced, and give to the people as well as the legislature the benefit of an executive statement

of financial condition as well as a constructive proposal for meeting financial needs."

It is evident that our brief reference to past practice, to which nearly three pages of your letter are addressed, was misunderstood. We agree that it is both impractical and impossible to have revenue measures considered on the floor of the house at the same time that estimates of expenditures are being discussed. This is not proposed. What we tried to get before you in this relation was the fact that neither legislators proposing expenditures nor the governor seem to have had any interest in the question as to where the money is coming from. It seems to us that anyone who assumes responsibility for leadership on an expenditure program should give some thought to the question as to how the money is to be raised. All of our experience shows that lack of forethought and lack of consideration of the necessary relation of money-raising to money-spending have led to gross extravagance. There is nothing in our letter to suggest that the governor should present the money-raising plan before decision is reached on the amount desired.

Your statement that "The State of New York is not a corporation organized for earning dividends" is not open to dispute; nor did my letter contain any implication to the contrary. What the Bureau has urged is this: that officers of government should be held to strict account as trustees for giving to the people a dollar's worth of service for every dollar that goes out of the public treasury; and that the people and their representatives under the constitution are entitled to know for what purposes officers propose to raise and spend money before the legislators are called on to grant further authority. These rights and expectations are based on the specific mandate of the constitution (Art. IV, sec. 4): "The governor * * * shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to it as he shall judge expedient." It seems to us that the governor is not relieved of all responsibility except to veto bills. It seems to us that the clause "condition of the state" means, among other things, financial condition; and that having set forth what the "financial condition" is, the governor should regard it as "expedient" to lay before the representative branch a statement of "ways and means."

Turning now to the memorial: As a considerable part of your letter bears on the subject of the proposed amendment to the statute law, and so many points of seeming difference are now raised, may I take this opportunity to present these matters for your consideration a little more definitely. The practice which has grown up under the present law is fully exemplified in the three exhibits which went along with our memorial. The results of individual initiative by members of the legislature are shown in the list of 272 separate appropriation bills introduced in the

last session for local constituencies; in the 67 separate appropriation bills which passed the house and were sent to the senate for concurrence; in the 33 separate appropriation bills which passed the senate and were sent to the house for concurrence; in the legislative record of 100 bills separately considered in the two houses; in the 82 bills which came to you for signature, many of which were actually signed before the general appropriation bills had to be acted upon, and before any opportunity was given for public hearing. After calling attention to the results of the practice that has grown up under existing statutes and procedure—a practice of sending all financial matters to standing committees where they may be considered behind closed doors, with no opportunity given to members of the legislature for interrogating executive officers openly on the floor, and with no opportunity given to executive officers personally to present to the legislature, explain and defend their own proposals—we suggested to the legislature that the laws be changed in the following particulars:

1—To require that all estimates of expenditures be sent to the governor for his consideration and review before the beginning of the session.

2—To authorize the governor to prepare a consolidated estimate of expenditures and a definite plan or proposal for financing next year's needs—the estimates of expenditures to be submitted by him to the legislature separately at the beginning of the session.

3—To require each house to take up the governor's proposals and estimates in committee of the whole, with opportunity given to the governor and his representatives to be present.

4—To require each house to come to a vote, after discussion in committee of the whole, on the amount asked for for each office and on the financial plan presented before submitting these requests and proposals to standing committees for drafting bills, etc.

5—To require that any local or other measure submitted by a member which provides for an increase in an item or for an additional item of appropriation be by separate bill.

From your letter I understand your position on each of these propositions to be this:

1—That the proposed change in law requiring all estimates to be submitted to the governor is superfluous, since he can now get them from the comptroller if he wishes.

2—That the proposed change of law authorizing the governor to review estimates and prepare and submit at at the beginning of the session a consolidated estimate of expenditures and a plan of financing which represents his views, is also superfluous in so far as it

pertains to estimates of expenditures; and unwise so far as it pertains to revenues and borrowings.

3—That the proposed change of law requiring that the governor's proposal ("tentative" or otherwise) be taken up in committee of the whole house is none of the governor's affair; but that, so far as it would give opportunity for the governor to be present to explain and defend, this is an opportunity the governor does not want.

4—That the proposed change of law requiring each house to come to a vote in committee of the whole house on the amount asked for each office, and on the governor's plan of financing, before submission to standing committees, is a matter in which the governor is not interested.

5—That the proposed change of law requiring every measure submitted by a member, increasing items in the governor's proposal, should be handled by constitutional amendment and not by statute.

May I also undertake to state what we understand to be your further views on the subject of our memorial. As I get them from the letter before us, you hold:

1—That the governor has done all he may be expected to do, namely, to submit a "tentative" budget proposal for appropriations, and to submit in an advisory capacity only "a proper model for a state appropriation bill."

2—That you are opposed to going even this far on revenue and borrowing measures.

3—That you are not "prepared to support any plan which shall make the executive other than what he has been in the past, namely, an adviser to the legislature when necessary, on all matters of legislation, and a check upon the legislature when its acts do not conform to his judgment as to what are the best interests of the state."

4—That "any action of this sort [i. e., such as our proposal] should be taken up with the legislature and not through the executive."

5—That you would regard any initiative or leadership on the part of the executive, which would bring his proposal in a formal way before the house and give to the governor an opportunity personally or through representatives a chance to be heard on the floor in committee of the whole, an invasion of the sacred constitutional principle of separation of powers.

6—That while you agree that the procedure on money measures should be such as to locate responsibility and give fullest publicity, in your opinion the introduction of a "tentative" proposal for expenditures by the governor at the beginning of the session without opportunity for question by members or for open discussion on the

floor; and a constitutional amendment giving to the governor power to reduce items after they have been passed would secure all the publicity desired.

As said before, the only purpose which I have in listing these propositions is to get them before us in such form that they may be either assented to or dissented from—thereby making it easy to define and discuss differences, should such exist.

Commenting on our proposals you say:

"Your proposed amendments [our suggested draft] to the executive and legislative laws of the state represent an attempt to establish by legislation as much as possible of that executivs budget plan which was a part of the recently defeated proposed constitution. * * * Except in respect to the right of the executive to reduce, as well as to veto items, I am opposed to any extension of this procedure beyond the limitations established by the existing constitution."

This raises in my mind the following broad questions:

1—Do you consider the proposed amendments to the existing statute law unconstitutional?

2—Can the executive be held responsible for results on any "tentative" or other proposal under a procedure which permits individual members to increase items without consulting the wishes of the executive or giving to him an opportunity to be heard before the measure is passed?

3—Is there any procedure which has been developed anywhere that is so well adapted to give publicity to financial proposals; to give opportunities to members on the floor to ask questions of officers who are charged with the direction and management of the state's business; to give executive officers an opportunity to submit, explain and defend plans which they have conceived to be for the best interests of the state; to give the people through the press a chance to know what has been going on and to have the benefit of discussion and criticism of plans, as is the committee-of-the-whole procedure essentially in the form suggested in the draft that accompanied our memorial?

4—Has not such a procedure as is suggested always resulted in increasing the power and control of the legislative body by cutting out the monopolies exercised by a few men on standing committees, and forcing executive officers to convince a majority of the representatives of the people that their proposals are sound and in the interest of the general welfare, before they are approved?

5—Has not the standing committee system in this country been the very thing that has subverted the principle of separation of powers—put matters of administra-

tion into the hands of irresponsible groups of legislators and made the irresponsibility, inefficiency, and wastefulness of our government a subject of constant reproach?

6—Can public hearings by the governor after bills have been passed take the place of hearings on a definite executive plan prepared, submitted and discussed on the floor before the bill is up for passage; can it take the place of leadership and open-handed dealing; is not the extension of the veto power simply one of the many forms of "invisible government"?

7—If the governor were given the right to reduce as well as to veto items in the appropriation bill would not the exercise of this unusual right, not granted specifically by the constitution of any other state, greatly increase the power of the governor in his relation to the legislature on financial matters with a corresponding decrease in the powers of the legislature to determine amounts of appropriations? Would the exercise of this right of veto and reduction over items of appropriations satisfy in any manner the requirements of Art. IV, sec. 4, of the constitution quoted above? Would not this operate in practice, to take away from the legislature their proper function and enable the governor to override the legislative will without opportunity given to members to be heard?

These questions occur to me because it seems that the issue presented in this discussion is one which goes to the very foundation of the republican form of government. The ends of democracy, if they are served, must be attained through some kind of leadership which may be held to strict account. Is not the true picture of a representative body one which conceives of it as a meeting of the people through representatives—as an agency which, in addition to its own initiative in matters of making laws, is expected to review, approve or disapprove the acts and proposals of officers who are chosen to carry on the business of the people; is it not a principle which has been tested out by experience and found to be effective, that a body of representatives coming from different parts of the state is the best agency that the people can employ to review, discuss and express opinion as to the desirability of executive proposals? Is not such a use necessary to expression of the will of the majority on all measures concerning which there is not an irreconcilable controversy between the executive and representatives of the people? Is not such a review and revision essential to the intelligent expression of opinion on the efficiency and fidelity of the executive, by a broad electorate?

Sincerely,

F. A. CLEVELAND, *Director.*

MSH # 22345

END OF
TITLE